

STATEMENT OF THE HONORABLE WM. LACY CLAY
Before
The Subcommittee on Capital Markets, Insurance and Government Sponsored
Enterprises
“Investor Protection: A Review of Attorney Abuses in Securities Litigation and
Legislative Remedies”
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Good morning Chairman Baker, Ranking Member Kanjorski, Members of the Committee and witnesses.

It is alarming to see the discovery of additional, alleged ways to defraud investors of their retirements; their children's college funds; trusts for their families and other current or future plans for their investments. There is currently a case in court, no decision has been rendered, in which a law firm is accused of giving \$11.3 million in kickbacks to “paid plaintiffs”. The indictment alleges that the firm received well over \$200 million in attorneys' fees from class action lawsuits over the past 20 years. There is a 20 count indictment in this case.

My concern centers on the alleged amounts of money involved and the fear of this not being an isolated case. These alleged schemes potentially are costing billions of dollars to investors. It is the investors who ultimately pay the judgments. We must stop this bleeding of our investment resources. However, in our haste to do something about this problem, we must not put in remedies that further complicate the problem.

H.R. 5491, the Securities Litigation Attorney Accountability and Transparency Act has been introduced as a remedy for this issue. I, as well as many others, have concerns that the “loser pays provision” of the bill could add a threat to Plaintiff attorneys that would result in discouraging meritorious lawsuits as well as the intended frivolous lawsuits. Many are concerned that “if a judge determines that their case was “not substantially justified” the plaintiff could be forced to pay the defendant's legal fees. This could eliminate those law firms that work on a contingent fee basis and only the large firms would be able to take the risk of these cases.

I also have concerns about Section 4 of H. R. 5491. This provision removes the right of plaintiffs to choose their lead attorneys. The Consumer Federation of America writes that “allowing judges to impose a competitive bidding process suggests that costs are the only relevant factor to consider when selecting counsel and that judges are better able than investors to determine what is in their best interests. Under the worst case scenario, investors could be forced to accept representation by a lower cost firm that lacks the expertise and experience of other available counsel and could lose their case as a result.” (End of quote)

I look forward to hearing the witnesses' testimonies and the discussion of these and other salient issues on this subject. I also commend Chairman Baker for bringing forth legislation and hope that we can work on compatible legislation to address this need. I yield back the balance of my time.